1
2
3
4   UNITED STATES DISTRICT COURT
          WESTERN DISTRICT OF WASHINGTON
5   AT TACOMA
6   JOHN E. BARNHOUSE,

7   Plaintiff,   Case No. 08-5553 RJB/KLS

8   v.   ORDER GRANTING DEFENDANTS'
                                                 MOTION TO STAY DISCOVERY
9   ERIC YOUNG, *et al.*,

10   Defendants.

11

12   Before the Court is Defendants' motion to stay discovery pending the Court's resolution of

13 Defendants' motion to dismiss. Dkt. # 14. For the reasons stated below, the Court finds that the

14 motion should be granted.

15   **BACKGROUND**

16   Plaintiff John Barnhouse filed a 42 U.S.C. § 1983 action alleging that on August 31, 2006,

17 Defendants used excessive force against him in violation of the Eighth Amendment. Dkt. # 4.

18 Presently pending before the Court is the motion to dismiss of Defendants Eric Young, Michael

19 Christensen and Jeff Kettel. Dkt. # 14. Defendants argue that Mr. Barnhouse's complaint must be

20 dismissed because he has failed to exhaust his administrative remedies. *Id*., p. 2.

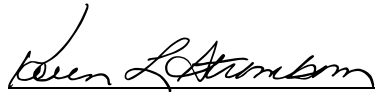21   **DISCUSSION**

22   The court has broad discretionary powers to control discovery. *Little v. City of Seattle*, 863

23 F.2d 681, 685 (9th Cir. 1988). Upon showing of good cause, the court may deny or limit discovery.

24 Fed. R. Civ. P. 26(c). A court may relieve a party of the burdens of discovery while a dispositive

25

26 ORDER - 1

1 motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir. 1989), amended at 906 F.2d 465 (9th

2 Cir. 1990) *Rae v. Union Bank*, 725 F.2d 478 (9th Cir. 1984).

3   The Court finds that a stay is warranted while the Court determines the threshold issue of

4 whether Mr. Barnhouse has exhausted his administrative remedies. If the evidence reflects that Mr.

5 Barnhouse has not exhausted his administrative remedies, his claims must be dismissed without

6 prejudice. *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003). Thus, discovery at this juncture

7 would be unnecessary and burdensome on the Defendants.

8   Accordingly, all discovery in this matter shall be **STAYED** pending further order of this

9 Court.

10   DATED this _6th_ day of April, 2009.

11

12

13   Karen L. Strombom
                                          United States Magistrate Judge
14

15

16

17

18

19

20

21

22

23

24

25

26 ORDER - 2